

Application No. 10/523176
Reply to Action dated 01/13/2010

REMARKS

Applicant respectfully requests favorable reconsideration and reexamination of this application.

Claims 1, 10, and 17 have been revised. The revisions are supported by, for example, Figs. 1 and 15.

There is no new matter. Claims 1-8, 10-11, 14-17, and 19 are pending.

Drawings

Applicant notes that the item 10 on the Office Action Summary does not indicate that the drawings filed are accepted. Applicant respectfully requests confirmation that the drawings are accepted in the next official communication.

Claim Rejections – 35 USC § 112

Claims 1-8, 10, 11, 14-17, and 19 were rejected under 35 USC 112, second paragraph, as being indefinite. The rejection stated that it is not certain whether the “housing” is considered a structural part of the invention. Applicant traverses the rejection.

Claims 1, 10, and 17 have been revised to advance the prosecution of this application to clarify that the lancet unit recited in the claims is provided separately from the lancing apparatus and that the lancet unit supplies a lancet to and removing the lancet from the lancing apparatus by temporarily attaching to the “housing” of the lancing apparatus, the “housing” being a part of the lancing apparatus. The “housing” is not a structural part of the lancet unit recited in the claims.

The claim clearly recites that the lancet unit is a separate device from the lancing apparatus and the term “housing” is recited in order to describe properties of the lancet unit, i.e. how the lancet unit is able to interact with the lancing apparatus. Further, one of ordinary skill in the art would easily understand that the “housing” is not a structural part of the lancet unit based on the Specification in the application (see for example Figs 1 and 15). Therefore, claims 1-8, 10, 11, 14-17, and 19 are not indefinite. Applicant respectfully requests withdrawal of the rejection.

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Claim Rejections – 35 USC § 102

Claims 1-5, 7-14, 16, 17, and 19-22 were rejected under 35 USC 102(b) as being anticipated by Duchon et al. (US 5879311). Applicant traverses the rejection.

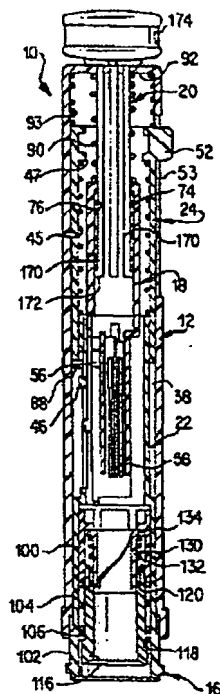
Applicants respectfully bring to the Examiner's attention that during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification," *In re Suitco Surface, Inc.* Fed. Cir. Case No. 2009-1418 (Fed. Cir. 2010), citing *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007), citing *In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997). Accordingly, the rule is not that claims are to be given their broadest construction, but that they must be given "their broadest reasonable construction consistent with the specification" (emphasis added). Further, the claims must be read "in light of the specification as it would be interpreted by one of ordinary skill in the art," *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990).

Regarding claim 1, the rejection stated that Duchon et al. discloses a lancet unit including a case 12 that is temporarily attached to a housing 22 of a lancing apparatus. Applicant respectfully disagrees. The rejection is based on an unreasonably broad interpretation of the claim that is not consistent with the Specification.

Claim 1 is directed towards a lancet unit that is provided separately from a lancing apparatus. The lancet unit being a device configured to supply a lancet to and remove the lancet from the lancing apparatus. The structural features of the lancet unit recited in claim 1 are not directed towards the lancing apparatus.

In contrast, Duchon et al. discloses a lancing apparatus (lancing device 10, see Fig. 3A). Duchon et al. does not disclose a separate device for supplying a lancet to and removing the lancet from the lancing apparatus. Duchon et al. discloses that the lancing device 10 includes an interposer 22 mounted inside a housing 12 of the lancing device 10 (see Fig. 3A, column 5, line 64, and column 6, lines 5-16). Accordingly, the interposer 22 and the housing 12 are structural parts of the lancing device 10. Duchon et al. does not disclose that the interposer 22 and the housing 12 are structural parts of another device that is provided separately from the lancing device 10. It is unreasonable to conclude that the housing 12 and the interposer 22 are structural parts of another device that is provided separately from the lancing device 10.

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Duchon et al., FIG. 3A (showing a lancing device 10)

Therefore, Duchon et al. does not disclose the lancet unit recited in claim 1. Claim 1 is patentable over Duchon et al. Claims 2-5, 7-14, 16 are patentable for at least the same reasons as claim 1 from which they depend. Applicant respectfully requests favorable reconsideration of the claims.

Claim 17 is also directed towards a lancet removal tool for removing a lancet from a lancing apparatus, the lancet removal tool being provided separately from and temporarily attached to the housing of the lancing apparatus at the time of removing the lancet from the lancing apparatus. Duchon et al. fails to teach a device that is provided separately from the lancing device 10 having the features recited in claim 17. Therefore, claim 17 and its dependent claims 19-22 are patentable over Duchon et al. Applicant respectfully requests favorable reconsideration of the claims.

Claim Rejections – 35 USC § 103

Claim 15 was rejected under 35 USC 103(a) as being unpatentable over Duchon et al. in view of Mitchen (US 5014718). Applicant does not concede the correctness of the rejection.

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Mitchen fails to remedy the deficiencies of Duchon et al. stated above in regard to claim 1. Thus, claim 15 is patentable for at least the same reasons as claim 1 from which it depends. Applicant respectfully requests a favorable reexamination and reconsideration of the claim.

In view of the above, early issuance of a notice of allowance is solicited. Any questions regarding this communication can be directed to the undersigned attorney, Douglas P. Mueller, Reg. No. 30,300 at (612) 455-3804.

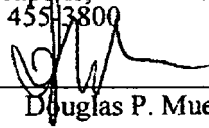


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Respectfully submitted,

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